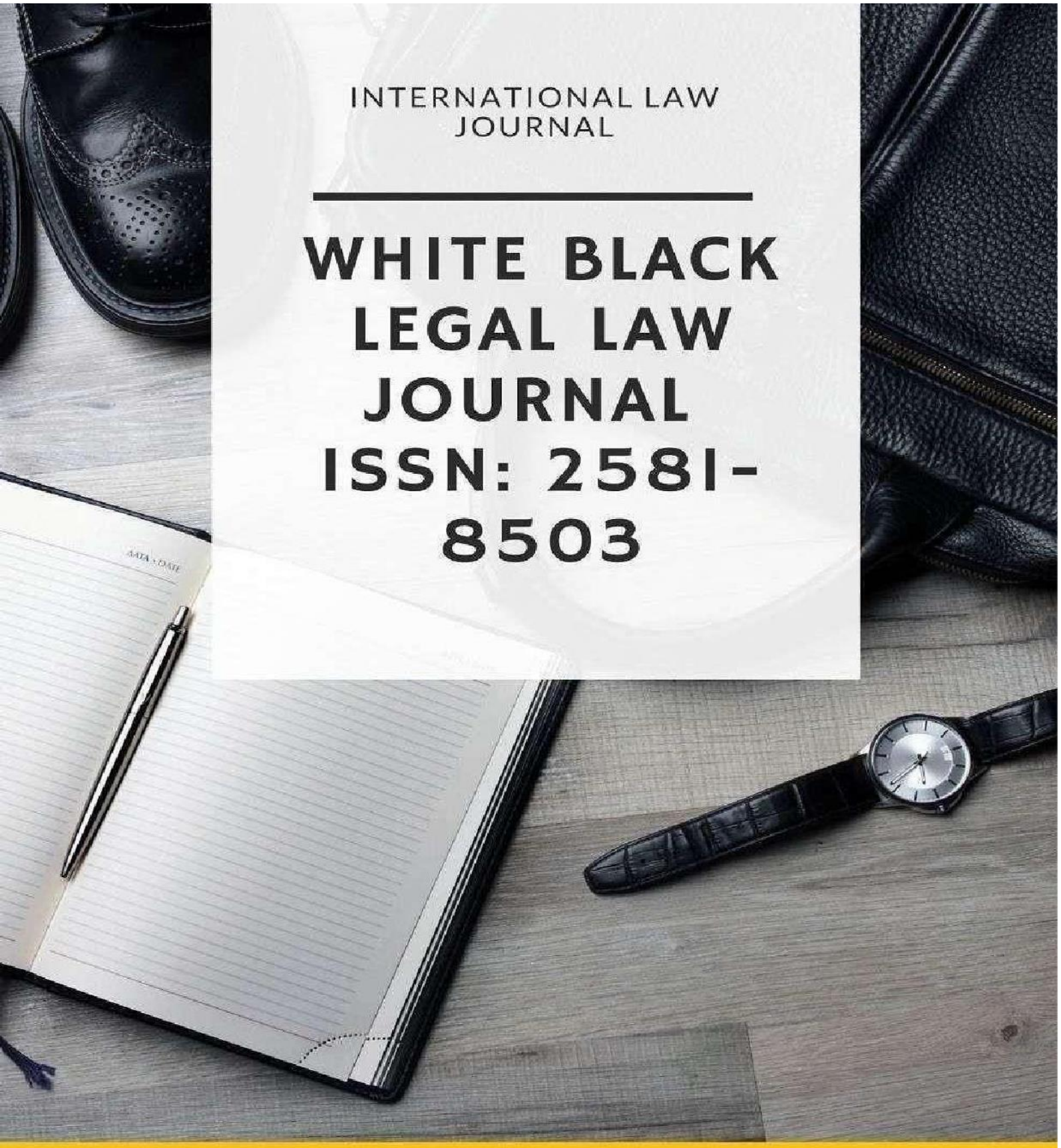

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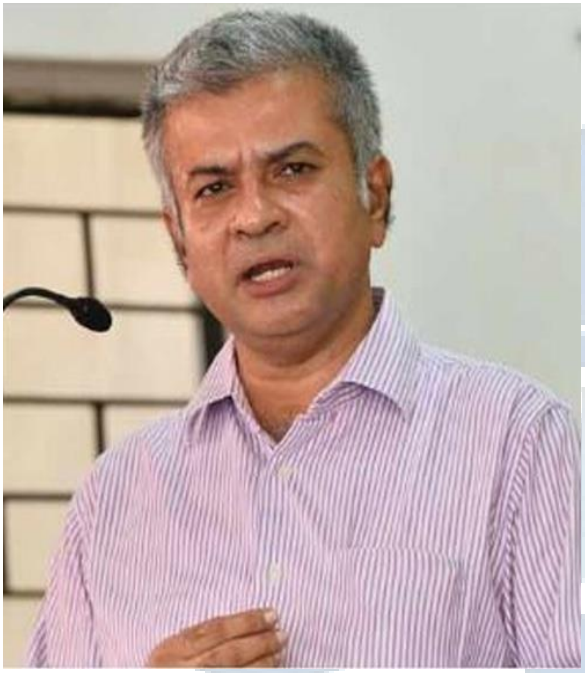

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BLURRING THE LINE: INTOXICATION AND AUTOMATISM AS DEFENCES AND THE IMPLICATIONS ON SOCIETY

AUTHORED BY - ADV. ALBERT PATTALI

This paper explores the interplay of intoxication and automatism as defenses in criminal liability, analyzing their historical evolution, application, and legal interpretation across common law and statutory frameworks. It delves into the dichotomy of voluntary and involuntary intoxication, emphasizing their distinct treatment concerning crimes requiring specific versus basic intent. The paper also discusses the nuanced approaches under the penal laws, which emphasize the involuntary administration of intoxicants and the delineation between intent and knowledge. Furthermore, the concept of automatism is scrutinized, distinguishing non-insane from insane automatism and the requisite conditions for its successful invocation. The study concludes by underscoring the importance of balancing these defenses with societal standards and evolving jurisprudence.

INTOXICATION

Introduction

Black's Law Dictionary explains intoxication as 'The state of being poisoned. But in its popular use this term is restricted to alcoholic intoxication, that is, drunkenness or inebriety, or the mental and physical condition induced by drinking excessive quantities of alcoholic liquors'. Intoxication may lead to a form of lunacy in which the state of mind is temporarily suspended. This condition is known as *'dementia offectatia'*. In this condition, the person intoxicated cannot know the consequences of his actions. He may also not know the acts he performs. He won't be able to judge his acts or control his emotions in a state of intoxication.

In law, the intoxication defense is a defense by which a defendant may claim diminished responsibility on the basis of substance intoxication. Intoxication is not a defence to a crime as such, but where a person is intoxicated through drink or drugs and commits a crime, the level of intoxication may be such as to prevent the defendant forming the necessary *mens rea* of the crime. The burden of proof rests on the defendant to provide some evidence of intoxication

which can be put before the jury.[1]

Public policy plays a strong factor in ascertaining whether the defendant's intoxication may be used by a defendant to negate the mens rea of a crime and it is often seen as an aggravating factor rather than a mitigating factor. Societies have varied in their attitudes and cultural standards regarding public intoxication, historically based on the relationship between religion and drugs in general, and religion and alcohol in particular. In some instances, consumption of a mind-altering substance has formed the basis of religious or other socially approved ceremonies and festivals. In others, intoxication has been stigmatized as a sign of human weakness, of immorality, or as a sin. Secular approaches may also vary, having less inherent opposition to drugs but acknowledging that these may affect the inhibitions that help to keep socialized individuals from breaking prevailing social taboos which may or may not have been expressly criminalized. The attitude of a legal system to intoxicating substances can affect the applicability of intoxication as a defense under its laws: a system strongly opposed to a substance may even view intoxication as an aggravating factor rather than a mitigating one. With regard to punishment, intoxication may be a mitigating factor that decreases a prison or jail sentence.

History of Intoxication Defence

Intoxication, as a defence, is a difficult concept involving a clash of perspectives. One perspective finds fault with the defence as it absolves a morally blameworthy accused who, in committing an offence, willingly places himself in an uncontrollable state. The other perspective aligns with traditional criminal law precepts by permitting the defence on the basis that only those accused who have the required fault element of the crime should be punished. Historically, these two perspectives on intoxication were not separated and the courts fashioned an awkward alliance between these two visions of responsibility: the morally responsible accused who chose to become intoxicated and the morally innocent accused who was acting without *mens rea* and therefore not criminally responsible.

The common law punished sober and intoxicated offenders equally. According to *Reniger v Fogossa*[2], an English case from the year 1551 'If a person that is drunk kills another, this shall

[1] Jerome Hall, *Intoxication and Criminal Responsibility*, 57 Harv. L. Rev. 1045 (1944)
[2] Reniger v. Fogossa, 75 E.R. 1

be felony, and he shall be hanged for it, and yet he did it through ignorance, for when he was drunk he had no understanding nor memory; but inasmuch as that ignorance was occasioned by his own act and folly, and he might have avoided it, he shall not be privileged thereby'. Because the offender created his disability, it could not serve to exculpate. This analysis flowed from the law's former "harm-oriented" framework, which considered harm a prima facie case of guilt. A valid defense (which intoxication was not) could negate the prima facie case. In contrast, the modern "act-oriented" framework first considers the mental state of the defendant. Where there is no mens rea, there is no need to consider the extent of the harm caused. This analytical shift has affected the law's posture toward crimes committed under severe intoxication. One who cannot form a criminal intent due to intoxication has not violated the mental element of the offense. In *Terry v State*[2], the Court stated, "The murder statute clearly requires an intentional act on the part of the perpetrator. In order to form intent, the perpetrator must be acting consciously and competently. Any situation which renders the perpetrator incapable of forming intent frees him from the responsibility of his acts. Thus, in the modern framework, where there is no mental element, there also is no punishable wrong."

The evolution of the law from *Reniger v Fogossa* to *Terry v State*[3] resulted not only from a new procedural framework but also from changing substantive ideals of justice. Prompted by myriad changes in social, political, medical and legal philosophies, nineteenth and early twentieth century courts greatly expanded the exculpatory effect of intoxication. In most of the nineteenth century, the classical school of criminology prevailed. The classical model was based on the premise of a social contract through which people surrendered liberties to the state in exchange for protection from criminals and wrongdoers. By the late nineteenth century, the scientific school had begun to displace its classical forerunner. The scientific school attributed criminal behaviour to biological and environmental determinism, believing criminals to be neither selfish nor sinful but merely sick. The scientific school promoted the notion that the questions of crime in general and intoxication in particular were not moral in nature but medical. This shift mirrored the larger cultural trend in which individual rights replaced individual responsibilities. Individuals increasingly came to see their interests through their own perspectives, rather than that of a community. The law responded by reallocating rights enjoyed by the community to the individual.[4]

[3] *State v. Terry*, 5 Ohio App. 2d 122, 214 N.E.2d 114 (Ohio Ct. App. 1966)
[4] Mitchell Keiter, *Just Say No Excuse: The Rise and Fall of the Intoxication Defense*, 87 J. Crim. L. & Criminology (1973-) 482 (1997)

The law has formulated various rules of uncertain ambit in seeking to strike the balance between on the one hand, imposing criminal liability on a party who did not have the mental element of the crime and on the other, protecting the public from those who deliberately put themselves in a position where they are unable to control their actions. For this reason the law draws a distinction between voluntary intoxication and involuntary intoxication.

Voluntary & Involuntary Intoxication

Voluntary Intoxication

Voluntary intoxication, where a defendant has willfully consumed drink or drugs before committing acts which constitute the prohibited conduct (*actus reus*) of an offence, has posed a considerable problem for the English criminal law. Although the rule concerning voluntary intoxication has persisted formally, a radical modification in the law occurred in the nineteenth century. It seems to have been suggested first by Holroyd in a murder case in 1819 that, while voluntary drunkenness could not be a complete excuse, it should be considered in determining premeditation. There was some tendency to relax the rule in a later case of aggravated assault but this was largely negatived by equivocal instructions that if a stick were used, then the drunkenness was relevant, but where a dangerous weapon is used, which, if used, must produce grievous bodily harm, drunkenness can have no effect on the consideration of the malicious intent of the party. There is a correspondence between incidences of drunkenness and crimes of violence, such as assaults and stabbings.

Accordingly, there is a debate about the effect of voluntary intoxication on the mental element of crimes, which is often that the defendant foresaw the consequences, or that they intended them. Even though voluntary intoxication means that someone has consumed intoxicating substances with their own free will, he may still have a defense to the offence with which he is charged. The intent in case of a crime is very important and even though a person maybe voluntarily intoxicated, the very fact that he is unable to form the required intent works in his favor. The severity of the punishment is reduced due to this defense.

Establishing a defense of voluntary intoxication is much more difficult than involuntary intoxication. Under prevailing legal standards, voluntary intoxication is an applicable defense only for certain crimes, and, even in those circumstances, juries are far less likely to accept a defense of intoxication when the defendant brought the intoxication upon himself or herself.

Involuntary Intoxication

Unlike cases where a defendant has intoxicated himself voluntarily, the courts have taken a far more lenient view of defendants who become intoxicated through no fault of their own. However, in the case of *R v Kingston*[5], the House of Lords held there was no such defence. Only where the defendant could be shown to lack the *mens rea* of the offence due to his intoxicated state could he escape criminal sanction. Involuntary intoxication is not necessarily a full defence to criminal charges, as there are several qualifications to what can be called 'involuntary', some of which have met criticism and calls for reform. Nevertheless, a defendant who successfully argues involuntary intoxication will not be held culpable for actions they carried out while intoxicated.

In *R v Allen*[6] it was said that intoxication is not involuntary when the accused did not know that the wine drunk was of high alcohol content. The outcome may be explained by saying that the effects of alcohol are in any case unpredictable. With involuntary intoxication, furthermore, there is also an obvious risk of abuse. In the magistrates' courts the tale of the "spiked drink" is often told by motorists who have been prosecuted for driving with excess blood alcohol.

If a charged crime is a specific intent crime, meaning that the criminal defendant must have had the specific intent to commit the crime in question, involuntary intoxication can be a defense to criminal charges if it prevents the defendant from forming the intent that is required. For instance, the defendant may not understand the nature of his or her actions or may be deemed incapable of obtaining the state of mind necessary to commit the crime.[7] Involuntary intoxication can also be a defense to a general intent crime if the defendant can establish that the involuntary intoxication acted similarly to an insanity defense and prevented the defendant from understanding the nature of his or her actions or differentiating between right and wrong. According to *DPP v Majewski*[8], even in case of a crime requiring basic intent, one can claim involuntary intoxication as a defence depending upon the facts of a particular case.

[5] *R v Kingston* [1994] 3 WLR 519, (HL)
[6] *R v Allen* [1988] Crim LR 698
[7] J.R. Spencer, *Involuntary Intoxication as a Defence*, 54 Cambridge L.J. 12 (1995)
[8] *DPP v Majewski* [1977] AC 443 (HL)

Voluntary Intoxication and Intent Based Crimes

The law draws a distinction between crimes of basic intent and crimes of specific intent. This distinction was drawn in *DPP v Beard*[9] and affirmed in *DPP v Majewski*. In dealing with this issue and balancing theoretical problems with public policy issues, the English law has categorised offences into two categories, those of basic intent and those of specific intent. In the latter, the defendant's intoxication will be directly relevant as to whether he or she formed the necessary intent. In the former, the picture is more complicated and unclear, although it is known that intoxication will not provide a defence where recklessness can be shown on the accepted facts. Crimes of specific intent include murder, and those of basic intent include most crimes of recklessness, including manslaughter. Contrary to what was thought at the time of *DPP v Beard* one does not inquire whether the accused was capable of forming the specific intent but whether he did actually have the intent as was stated in *R v Sheehan and Moore*[10]. No explanation of the terms is entirely satisfactory and do not accurately cover the offences which have been categorised as either basic intent crimes or specific intent crimes. This was most noticed in *R v Heard.*[11]

Defence to Specific Intent Crimes

Where a specific intent is an essential element in the offence, evidence of a state of drunkenness rendering the accused incapable of forming such intent should be taken into consideration in order to determine whether he had in fact formed the intent necessary to constitute the particular crime. Where a crime is categorised as being one of specific intent, the defendant is allowed to rely on their intoxication to demonstrate that they lacked the *mens rea* of the offence. If he was so drunk that he was incapable of forming the intent required he could not be convicted of a crime which was committed only if the intent was proved. In a charge of murder based upon intention to kill or to do grievous bodily harm, if the jury are satisfied that the accused was, by reason of his drunken condition, incapable of forming the intent to kill or to do grievous bodily harm he cannot be convicted of murder. But nevertheless if unlawful homicide has been committed by the accused, and consequently he is guilty of unlawful homicide without malice aforethought that is manslaughter.

[9] *DPP v Beard* [1920] AC 479 (HL)
[10] R v Sheehan and Moore (1975) 60 Cr App R 308
[11] R v Heard [2008] QB 43

Defence to Basic Intent Crimes

Where a defendant's intoxication is voluntary and the crime is one of basic intent, the defendant is not permitted to rely on their intoxicated state to indicate that they lack the *mens rea* of the crime. According to *DPP v Majewski*, even in case of a crime requiring basic intent, one can claim involuntary intoxication as a defence depending upon the facts of a particular case. If an individual has to escape from a crime which requires a specific intent it will be very easy because the principle has been clearly laid down in *DPP v Majewski*, but if he has to escape from a crime of basic intent he will have to rely on both *DPP v Majewski* as well as *R v Hardie*[12].

Foreseeability Test

The presence or absence of liability may hang on a foreseeability test. The fact that the consumption of alcohol or the ingestion of drugs may cause a loss of control is well known. Thus, anyone who knowingly consumes is, at the very least, reckless as to the possibility of losing control. If they did not wish to lose control, they would not consume, so loss of control must be within the scope of their intention by continuing to consume. But, loss of control is not instantaneous and without symptoms. The issue of involuntary consumption is therefore contentious. In most legal systems, involuntary loss of control is limited to cases where there is no real loss of control with noticeable symptoms. Thus, for example, in many countries, the blood alcohol level for the commission of the offence of driving under the influence is set sufficiently low that people might exceed the limit without realising that they had consumed enough alcohol to do so. Leaving aside the issue that, in some countries, this is a strict liability offense excluding drunkenness as a defense, there is usually a requirement that the person who "spiked" the drinks be prosecuted in place of the driver. This reflects the fact that the commission of a crime has been procured by the actions of secretly adding the alcohol and the practical fact that without this rule, too many accused who are only marginally over the limit, might be encouraged to blame others for their intoxication.

Dutch Courage Test

Dutch courage refers to courage gained from intoxication with alcohol. The case of A*ttorney General for Northern Ireland v Gallagher*[13] is commonly referred to as the Dutch courage case.

[12] *R v Hardie* [1985] 1 WLR 64, (Court of Appeal).
[13] A-G for N. Ireland v. Gallagher [1963] AC 349 (HL)

The Respondent was an aggressive psychopath and prone to violent outbursts. This was particularly so if he had taken alcohol. He was frequently violent towards his wife. He had spent some time in a mental hospital for which he blamed his wife. On his release he went out and brought a bottle of whiskey and a knife. He intended to use the knife to kill his wife and brought the whiskey as he knew that this would make him aggressive to the extent that he would be able to kill. He drank the whiskey and killed his wife with the knife and a hammer. He was convicted of murder and appealed to the Court of Criminal Appeal Northern Ireland on the grounds of misdirection. His conviction was quashed. The Attorney General appealed to the House of Lords on the grounds that the defence of insanity was not open to him because before taking the drink, when there was no defect in his reason, he had clearly evinced an intention to kill his wife and any temporary derangement of his reason at the time of the killing was the result of his own voluntary act in taking the drink. Where a person deliberately gets himself intoxicated to give himself "Dutch Courage" to commit a crime, his intoxication will not be a defence even to crimes that can only be committed with a specific intention. He is to be blamed to the same extent as the person who intentionally commits a crime.[14]

Intoxication as a Defence under Indian laws

The Bharatiya Nyaya Sanhita in Sections 23 and 24 deals with general exception or general defence of intoxication when involved in crimes. In Section 24, malicious intention is attributed to the intoxicated person. Section 23 states that "Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong, or contrary to the law: provided that the thing that intoxicated him was administered to him without his will or against his knowledge." Section 24 states that "In cases where an act done is not an offence unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated, unless the thing which intoxicated him was administered to him without his knowledge or against his will."

Intoxication is perceived as a state of mind in which a person loses self-control and his ability to judge. In order for a person escape liability under S. 23 of the BNS on grounds of involuntary intoxication he must be able to fulfil the following three conditions:

[14] Donald S. Leonard, *Tests for Intoxication*, 38 J. Crim. L. & Criminology (1931-1951) 533 (1948)

a) The person should be incapable of knowing the nature of the act.
b) The person should be incapable of acting and thinking in a responsible manner and in all possibility isn't aware that his act is prohibited by the law.
c) The source of intoxication must have been given forcefully or someone should have induced the person to consume it.

Section 23 essentially deals with offences committed under the influence of drugs or alcohol. Such intoxication should be caused by fraud or coercion and such intoxication should limit his ability to decide what is right and what is wrong. Section 24 deals with intoxication which is self- induced. Such intoxication which results in an offence follows the principle that one who sins when drunk be punished when he is sober. However, in Delirium tremens, a form of insanity arising out of habitual drinking which makes a person reach a degree of madness whereby he is incapable of distinguishing between right and wrong, the disease is perceived as insanity and the person's case is given the same treatment as that of a case of involuntary drunkenness.

The important clause to be considered in these sections of our penal law is that the intoxicating substance must be administered against the will of the individual, voluntary drunkenness, under normal circumstances, cannot serve as an excuse for the commission of a crime. Nevertheless, there are some crimes which demand the explicit requirement of a specific intent and in such cases, when the accused has had so much to drink that he is unable to form the necessary intent, and then he cannot be blamed for the commission of the crime. The punishment of the accused can be reduced due to this defence from murder to culpable homicide not amounting to murder. Under Common Law, it is not merely Intoxication, but the 'Inability to form Intent as a result of Intoxication', which forms a legal defence against conviction for the commission of a criminal offence; a position which has been upheld by the Supreme Court in the landmark judgement of *Basdev* v. *State of Pepsu*[15]. This position of law has been widely criticized, and several opinions suggest that in the interest of public defence, intent, like knowledge in s. 24 of the BNS, 2023, should be presumed in cases of voluntary intoxication.

[15] *Basdev* v.*State of Pepsu* 1956 SCC 276

AUTOMATISM

Introduction

Black's Law Dictionary defines automatism as "An involuntary act such as sleepwalking that is performed in a state of unconsciousness. The subject does not act voluntarily and is not fully aware of his or her actions while in a state of automatism. Automatism has been used as a defense to show that a defendant lacked the requisite mental state for the commission of a crime. A defense based on automatism asserts that there was no act in the legal sense because at the time of the alleged crime, the defendant had no psychic awareness or volition."

Automatism is a rarely used criminal defence. It is one of the mental condition defences that relate to the mental state of the defendant. Automatism can be seen variously as lack of voluntariness, lack of culpability or excuse. Automatism means that the defendant was not aware of his or her actions when making the particular movements that constituted the illegal act. If a defendant, however, can show that they committed a crime as the result of an involuntary act they may be able to plead the defence of automatism. Defendant has the evidential responsibility to prove automatism. Results in complete acquittal, and hence the courts are reluctant to entertain it save in exceptional cases.

Scope of Automatism

Automatism is arguably the only defence that excludes responsibility by negating the existence of the *actus reus* which uniquely allows it to be a defence to both conventional and strict liability offences. Strict automatism is a denial of *actus reus* and therefore most commonly used as a defence against strict liability offences. There are a number of reasons why a person may go into a state of automatism, including dissociation or hypo/hyperglycemias. Unconsciousness is the defence of denial of mens rea, which is easier to prove and hence more commonly used for non-strict liability crimes. Intention is a problem in crimes of strict liability. Very few people intend to crash their vehicles, so clearly something better than intent is required to define automatism.[16]

Another issue with automatism is that when the issue is raised by the defence as a realistic defence, the prosecution then has to prove beyond reasonable doubt that the defendant was acting voluntarily. This is the case for several other defences like duress. The justification for this is that voluntary action is part of the definition of the offence, and therefore something

[16] J. Ll J. Edwards, *AUTOMATISM AND CRIMINAL RESPONSIBILITY*, 21 Mod. L. Rev. 375 (1958)

under the presumption of innocence the prosecution has to prove.[17] Exactly what part automatism plays in determining liability and the evidentiary burden for crime in English law was regarded by Devlin J., a member of the Divisional Court, in *Hill v Baxter*[18] where the defence of automatism failed because there was no good evidence for the alleged blackout.

Voluntary intoxication is not automatism. Involuntary intoxication can constitute automatism. This was the decision in *R v Hardie*, although this decision may have been the result of judicial misunderstanding of the effects of diazepam. However, in *R v Kingston* where a man with normally controlled pedophiliac urges succumbed to them after being drugged unknowingly for blackmail purposes; he was found still able to form the *mens rea* for indecent assault.

Non-insane and insane automatism

Non-insane automatism should be distinguished from insane automatism. Both involve an involuntary act; however, with insane automatism the involuntary action must have been caused by an internal factor. For non-insane automatism to be proven, the involuntary action must have been caused by an external factor.

If a defendant manages to successfully plead non-insane automatism, this serves as a complete defence and absolves them of all criminal liability. If a person successfully pleads insane automatism, a special verdict of not guilty by reason of insanity would be delivered which would usually see the defendant given a hospital order for the protection of the public. Where the defendant is a diabetic and commits a crime, whether he can successfully plead non-insane automatism will depend on whether it was the diabetes or the insulin which made him act illegally. In *R v Quick*[19], the defendant committed a crime while in hypoglycemic state because he failed to eat enough food to counterbalance the insulin he had administered. The court ruled that the insulin had made him commit the crime; this was an external factor so the non-insane automatism defence could be relied on. In *R v Hennessy*[20], however, the defendant had failed to take his insulin and committed a crime while in a hyperglycemic state. The court found it was the diabetes which caused him to offend; this was an internal factor and the defendant was

[17] *Burden of Proof in Automatism*, 2 Brit. Med. J. (1961)
[18] Hill v Baxter [1958] 1 All ER 193
[19] *R v Quick* [1973] 3 WLR 26 (Court of Appeal)
[20] *R v Hennessy* [1989] 1 WLR 287 (Court of Appeal)

thus criminally insane.[21]

To successfully rely on a plea of non-insane automatism, it must be shown that:

- There was an involuntary action arising from external source or reflex action.
- The action was completely involuntary.
- The automatism was not self-induced.

It is up to the jury to decide whether the defence is made out and that the defendant was acting involuntarily due to an external factor.
The defence of non-insane automatism has been successfully pleaded where the defendant committed a crime because he sneezed, and where he was suffering from post-traumatic stress disorder.

Conclusion

In different times and in different societies, the response towards public drunkenness has been on a scale of diametrically opposite attitudes. While certain cultures and societies have accepted alcohol consumption or drug-taking as a part of their religious or social rites, such behavior has attracted an entirely contrary response extending to its denigration as immoral and sinful. The norms of propriety have therefore always been dynamic and modern law has therefore appropriately steered clear of reflecting these wavering standards and criminalising intoxication per se but by adopting the more neutral standards based on whether an act arising from intoxication was voluntary or involuntary. The viability of any defence of a criminal act therefore rests on a combination of the voluntary vs. involuntary principle and the universal knowledge that consumption of intoxicants is likely to induce loss of control. The evolution of law in this area reflects a careful application of these standards.

In Indian law, the clause that the drug has to be administered against the will of the individual is given much more importance than it is under the British law. Also, the dichotomy between specific intent and basic intent is given a lot of importance in case of British law. The second factor that can be considered in the case is that in the Indian criminal law, the difference has been made very clear between the intention and knowledge of an individual. Even in British

[21] Eliezer Lederman, *Non-Insane and Insane Automatism: Reducing the Significance of a Problematic Distinction*, 34 Int'l & Compar. L.Q. 819 (1985)

law, the specific intent and the basic intent dichotomy have been elaborated, but they have not given an exclusive difference between the knowledge and intent.

Automatism operates as a complete defence in that if the defendant succeeds in establishing it, he will be acquitted, and the court ceases to have any jurisdiction on him. It is this factor which explains the reluctance of courts to recognise the defence of automatism in certain situations.